

REMARKS

Summary

Claims 1, 2 and 4-17 stand in this application. Claims 18-27 have been withdrawn. Claims 1, 6, 9, 11, 14 and 16 have been amended. No new matter has been added. Favorable reconsideration and allowance of the standing claims are respectfully requested.

Although Applicant disagrees with the broad grounds of rejection set forth in the Office Action, Applicant has amended independent claims 1, 6, 9, 11, 14 and 16 in order to facilitate prosecution on the merits. Applicant submits that the amendments merely clarify, either expressly or impliedly, what was already present in the claims.

35 U.S.C. § 103

At page 2, paragraph 4 of the Office Action claims 1, 2 and 4-17 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over US 6,130,896 to Lueker et al. ("Lueker") in view of US 6,888,819 to Mushkin et al. ("Mushkin"). Applicant respectfully traverses the rejection, and requests reconsideration and withdrawal of the obviousness rejection.

The Office Action has failed to meet its burden of establishing a *prima facie* case of obviousness. According to MPEP § 2143, three basic criteria must be met to establish a *prima facie* case of obviousness. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the reference (or

references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). See MPEP 706.02(j).

As recited above, to form a *prima facie* case of obviousness under 35 U.S.C § 103(a) the cited references, when combined, must teach or suggest every element of the claim. See MPEP § 2143.03, for example. Applicant respectfully submits that the Office Action has not established a *prima facie* case of obviousness because the cited references, taken alone or in combination, fail to teach or suggest every element recited in claims 1, 2 and 4-17. Therefore claims 1, 2 and 4-17 define over Lueker and Mushkin whether taken alone or in combination. For example, claim 1 recites the following language, in relevant part:

receive a common timing signal from the wireline network and adjust a local clock based upon the common timing signal, the common timing signal comprising an alternating current oscillating at a fixed frequency.

According to the Office Action, Mushkin teaches a common timing signal comprising a 60 HZ AC sine wave from a power line. Mushkin at column 12, lines 13-18, in relevant part, states:

alternatively, all nodes or a portion thereof may have access to an external clock. In this case, the nodes derive timing from the external clock. For example, if the media comprises the powerline, the zero crossings of the 50 or 60 Hz AC sine wave can be detected and used to derive the frame timing.

Applicant respectfully submits that this is different than the above recited language of claim 1. Claim 1 teaches "adjust[ing] a local clock based upon the common timing

signal, the common timing signal comprising an alternating current oscillating at a fixed frequency.” Applicant submits that Mushkin fails to teach, suggest or disclose adjusting a local clock based on the alternating current. In contrast, the alternating current in Mushkin is used to derive the frame timing.

Applicant respectfully submits that Mushkin actually teaches away from using the alternating current to adjust the local clock. Mushkin at column 11, lines 45-49, in relevant part, states:

the node derives a timing signal from the pulses (step 56)
and aligns its internal clock in accordance with the timing
signal, for example via a Phase Lock Loop (PLL) (step 58).

Mushkin, arguably, teaches using synchronization pulses from other nodes to align its internal clock. By way of contrast, the claimed subject matter teaches “adjust[ing] a local clock based upon the common timing signal, the common timing signal comprising an alternating current oscillating at a fixed frequency.” Therefore, Mushkin fails to disclose, teach or suggest the missing language. Consequently, Lueker and Mushkin, whether taken alone or in combination, fail to disclose, teach or suggest every element recited in claim 1.

Furthermore, if an independent claim is non-obvious under 35 U.S.C. § 103, then any claim depending therefrom is non-obvious. *See* MPEP § 2143.03, for example. Accordingly, removal of the obviousness rejection with respect to claim 1 is respectfully requested. Claims 2 and 4-5 also are non-obvious and patentable over Lueker and Mushkin, taken alone or in combination, at least on the basis of their dependency from claim 1. Applicant, therefore, respectfully requests the removal of the obviousness rejection with respect to these dependent claims.

Independent claims 6, 9, 11, 14 and 16 have been amended to recite features similar to those recited in claim 1. Therefore, Applicant respectfully submits that claims 6, 9, 11, 14 and 16 are not obvious and are patentable over Lueker and Mushkin, taken alone or in combination, for reasons analogous to those presented with respect to claim 1. Accordingly, Applicant respectfully requests removal of the obviousness rejection with respect to claims 6, 9, 11, 14 and 16. Furthermore, Applicant respectfully requests withdrawal of the obviousness rejection with respect to claims 7-8, 10, 12-13, 15 and 17 that depend from claims 6, 9, 11, 14 and 16 respectively, and therefore contain additional features that further distinguish these claims from Lueker and Mushkin.

For at least the reasons given above, claims 1, 2 and 4-17 are non-obvious and represent patentable subject matter in view of the cited references, whether taken alone or in combination. Accordingly, removal of the obviousness rejection with respect to claims 1, 2 and 4-17 is respectfully requested. Further, Applicant submits that the above-recited novel features provide new and unexpected results not recognized by the cited references. Accordingly, Applicant submits that the claims are not anticipated nor rendered obvious in view of the cited references.

Applicant does not otherwise concede, however, the correctness of the Office Action's rejection with respect to any of the dependent claims discussed above. Accordingly, Applicant hereby reserves the right to make additional arguments as may be necessary to further distinguish the dependent claims from the cited references, taken alone or in combination, based on additional features contained in the dependent claims that were not discussed above. A detailed discussion of these differences is believed to

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be unnecessary at this time in view of the basic differences in the independent claims pointed out above.

It is believed that claims 1, 2 and 4-17 are in allowable form. Accordingly, a timely Notice of Allowance to this effect is earnestly solicited.

The Examiner is respectfully requested to contact the undersigned by telephone if such contact would further the examination of the present patent application.

Respectfully submitted,

KACVINSKY LLC

A handwritten signature in black ink, appearing to read 'John F. Kacvinsky', with a long horizontal flourish extending to the right.

John F. Kacvinsky, Reg. No. 40,040
Under 37 CFR 1.34(a)

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